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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/589,135	06/23/2008	Tim Wiens	85-492-102	5450
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ADE & COMPANY INC. 2157 Henderson Highway WINNIPEG, MB R2G1P9 CANADA				
EXAMINER				
LATHAM, SAEEDA MONEE				
ART UNIT		PAPER NUMBER		
1782				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/589,135

Applicant(s)

WIENS, TIM

Examiner

Saeeda Latham

Art Unit

1782

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 July 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 5-9, 13-18 is/are pending in the application.
- 4a) Of the above claim(s) 9 and 13-16 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 5-8, 17, 18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-06)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Response to Amendment

1. The amendment to the claims filed on 7/13/2010 has been entered. Claims 1, 5-9, 13-18 are currently pending in this application, wherein claims 9, 13-16 are withdrawn from consideration.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. **Claims 1, 5, 17, 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Thacker (article, Performance of Broiler Chicks Fed Wheat-Based Diets Supplemented with Linpro) as evidenced by Buser et al., (article, Effects of Extrusion Temperature and Dwell Time on Aflatoxin Levels in Cottonseed).**

4. Regarding claims 1, 5, 17, 18, Thacker teaches chick feed that is supplemented with an extruded whole flax seed [considered intact oil seeds] and peas product, 50:50 full-fat flax seed and field peas [considered 50% pulse crop and 50% oil seed]. The product increases the incorporation of omega-3-fatty acids (abstract). Additionally the extrusion is done at a temperature of 125-130°C [considered 257 to 266°F] using an Instapro Extruder (see Materials and Methods).

5. Buser teaches the Instapro Extruder that reaches a maximum pressure of 2750kPa [considered about 398 psi] (see Materials and Methods). Therefore, it is inherently anticipated that the extrusion disclosed by Thatcher is known to achieve the claimed pressured as indicated by Buser.
6. The temperature and pressures taught is considered to achieve gelatinizing of the mixture.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. **Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Thacker (article, Performance of Broiler Chicks Fed Wheat-Based Diets Supplemented with Linpro) as evidenced by Buser et al., (article, Effects of Extrusion Temperature and Dwell Time on Aflatoxin Levels in Cottonseed).**

9. Claim 6 relates to a method of preparing an animal feed component. Thacker teaches chick feed that is supplemented with an extruded whole flax seed [considered intact oil seeds] and peas product, 50:50 full-fat flax seed and field peas [considered 50% pulse crop and 50% oil seed]. The product increases the incorporation of omega-3-fatty acids (abstract). Additionally the extrusion is done at a temperature of 125-130°C [considered 257 to 266°F] using an Instapro Extruder (see Materials and Methods).

10. Buser teaches the Instapro Extruder that reaches a maximum pressure of 2750kPa [considered about 398 psi] (see Materials and Methods). Therefore, it is inherently anticipated that the extrusion disclosed by Thatcher is known to achieve the claimed pressured as indicated by Buser.

11. Thacker does not teach the temperature of about 265F to about 268F. It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected about 265F to 266F because of the overlapping range taught by Thacker.

12. Claims 1, 5-8, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Glinksky USPA 20040037918 in view of Nahm USPN 4310558 in further view of Hodgson et al., USPN 4824683 in further view of Thacker (article, Performance of Broiler Chicks Fed Wheat-Based Diets Supplemented with Linpro).

13. Claims 1, 5-8, 17, 18 relates to a method of preparing an animal feed component. Glinksky teaches an extruded bird food product made from a mixture of grains, seeds, nuts and fresh fruits and vegetables (abstract). The bird food ingredients are mixed into dough, extruded and formed into multi-colored, multi-shaped pellets [0014]. The ingredients include vegetable such as flax seed, green split peas, yellow split peas, trappers peas; seeds/nuts include sunflower seeds [0019].

14. Glinksky does not teach the extrusion parameters. Nahm teaches an extruded fiber mixture pet food for a dry pet that has a tough, pliable, fibrous texture (abstract). The pet food comprised a green component such as peas (column 2, lines 61-62). In one embodiment ground peas are used (see Table IIa). The fibrous simulating pieces

include soybeans (column 2, lines 65-67). Typical mechanical processes of the ingredients are at about 212°F to about 400°F and about 15 psig to about 300 psig to convert the mass into a flowable substance (column 5, lines 61-65). Since both teach a dried animal feed, it would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized the extrusion conditions of Nahm to effectively mix the bird feed of Glinsky into a flowable product.

15. Neither Glinsky nor Nahm explicitly teach about 200 psi to about 400 psi. Nahm teaches the typical mechanical processes of the ingredients are at about 212°F to about 400°F and about 15 psig to about 300 psig to convert the mass into a flowable substance (column 5, lines 61-65). It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected about 200 psi to about 400 psi because of the overlapping range of Nahm.

16. Neither Glinsky nor Nahm explicitly teach temperature of 255F to 275F, 265F to about 268F, 300F to about 325F, or 325F to 335F. Nahm teaches the typical mechanical processes of the ingredients are at about 212°F to about 400°F and about 15 psig to about 300 psig to convert the mass into a flowable substance (column 5, lines 61-65). It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected about 255F to 275F, 265F to about 268F, 300F to about 325F, or 325F to 335F because of the overlapping range of Nahm.

17. Neither Glinsky nor Nahm teach the ground pulse crop diameter. Hodgson teaches the preparation of bread using pea bran that is ground into a size similar to flour, the average particle size of about 5 to 25 microns in diameter (column 4, lines 44-

50). Since both Nahm and Hodgson teach ground peas in food, it would have been obvious to one having ordinary skill in the art at the time of the invention to utilize ground pea that is to about 5 microns for food as taught by Hodgson to be used as the ground pea of Nahm to easily disperse the pea with other components to prepare the dried bird feed of Glinsky.

18. Neither Glinsky nor Nahm teach the mixture being 15-55% pulse crop and 45-85% oil seed, and intact oil seeds. Thacker teaches chick feed that is supplemented with an extruded whole flax seed [considered intact oil seeds] and peas product, 50:50 full-fat flax seed and field peas [considered 50% pulse crop and 50% oil seed]. The product increases the incorporation of omega-3-fatty acids (abstract). Additionally the extrusion is done at a temperature of 125-130°C [considered 257 to 260°F] (see Materials and Methods). The extruded product may provide poultry producers a method to increase omega-3-fatty acid content of poultry meat catering to the need of a health conscious consumer (Page 624). It would have been obvious to one having ordinary skill in the art at the time of the invention to have utilized the amount and a whole flax seed taught by Thacker to increase the omega-3-fatty acids in the extruded bird food product of Glinsky.

19. Claims 1, 5-8, 17, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Vanvolsem EP1106077.

20. Claims 1, 5-8, 17, 18 relates to a method of preparing an animal feed component. Vanvolsem teaches milk with a new content of saturated and unsaturated fatty acids that would have beneficial effects on human health, prevention of

cardiovascular disease and carcinogenesis [0013]. The invention is food for a dairy cow that uses extruded linseeds [known as flaxseed], which preserves a substantial percentage of omega 3 [0016, 0017]. The components in the extruded form include 50 to 99% linseed, 1 to 30% wheat, 1 to 20% leguminous plant seed and can also include 1 to 70% rape [0018]. The mixture is ground and extruded at a temperature between 80 and 150°C (considered 176°F to 302°F) [0021]. The leguminous plant seeds include peas, field bean or bean, singly or in a mixture [0033]. The end product is the food that is introduced to dairy cows as feed [0034, 0036].

21. Vanvolsem does not teach the extrusion pressure and gelatinizing. Since Vanvolsem teaches the extrusion machine Wenger X-235 [0032], it would have been obvious to one having ordinary skill in the art at the time of the invention to have operated the machine by selected a pressure between about 200 psi to about 400 psi that would have effectively gelatinized the mixture during extrusion processing.

22. Vanvolsem does not explicitly teach the mixture being 15-55% pulse crop and 45-85% oil seed. It would have been obvious to one having ordinary skill in the art, at the time of the invention, to have selected the components in the extruded form include 50 to 85% linseed, 15 to 20% leguminous plant seed because of the overlapping range of Vanvolsem.

Response to Arguments

23. Applicant's arguments with respect to claims 1, 4-9, 13-18 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

24. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

25. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

26. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Saeeda Latham whose telephone number is 571-270-1154. The examiner can normally be reached on Monday to Thursday 8:00AM - 5:00PM EST.

27. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on 571-272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

28. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/S. L./
Examiner, Art Unit 1782

/Rena L. Dye/
Supervisory Patent Examiner, Art Unit 1782